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ORIGINAL

May 21, 2008

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

FILED/ACCEPTED
MAY 21 2008
Federal Communications Commission
Office of the Secretary

Re: Notice of *Ex Parte* Presentation, InterCall, Inc.,
Appeal of Decision of the Universal Service Administrative Company,
WC Docket No. 96-45

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on May 20, 2008, InterCall's attorneys met with Amy Bender, Acting Legal Advisor to Chairman Martin, in the proceeding identified above. In attendance on behalf of InterCall, Inc. were Brad E. Mutschelknaus and Steven A. Augustino of Kelley Drye & Warren LLP.

In the meeting we discussed the Request for Review By InterCall, Inc. of Decision of Universal Service Administrator and InterCall's Petition for Stay, both filed in

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Ms. Marlene H. Dortch
May 21, 2008
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WCB Docket 96-45. The positions presented were consistent with those Intercall presented on the record. In addition, the attached presentation materials were distributed at the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a distinct "A" and "Augustino" following.

Steven A. Augustino

cc: Amy Bender
Dana Shaffer
Jennifer McKee
Thomas Buckley
Greg Guice
Cindy Spiers

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InterCall, Inc.

Review of USAC Administrator's Decision

May 20, 2008

About InterCall

- Subsidiary Of West Corporation, a Leading Provider of Outsourced Communications Solutions Including Customer Acquisition, Customer Care, Emergency Communications and Conferencing Services
- Not a Telecommunications Carrier; Does Not Own Transmission Facilities
- Purchases Toll-free Services From IXC's as an End User of Telecom
 - Intercall paid over \$20 million in carrier USF surcharges from 2005-2007

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InterCall's Appeal and Petition for Stay

- In This Proceeding, InterCall Seeks:
 - **Reversal** of USAC Conclusion that InterCall provides "Toll Teleconferencing"
 - USAC's decision violates 54.702(c)
 - The 499A Revision cannot add new filers
 - Audio bridging is not a telecom service
 - Stand alone audio bridging providers contribute indirectly as end users
 - **Stay** of the USAC Instruction to File 499s
 - Cannot single out InterCall in the industry
 - Retroactive application would harm InterCall
 - A Stay will Preserve the Status Quo

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Commenters

- Stand Alone Audio Bridging Providers
 - Premiere, Genesys, Canopco, Telespan Publishing Corporation
- Integrated Audio Bridging Providers (IXCs)
 - AT&T, Qwest, Verizon

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The Comments Validate InterCall's Factual Claims

➤ All Commenters Agreed

- Stand alone providers have operated as end users for decades
 - IXC's treat stand alone providers as end users today
 - An industry-wide solution is appropriate
- ## ➤ No commenter supports retroactive USF assessments on stand alone providers
- Verizon "takes no position" on retroactivity but argues only for prospective changes
 - All others oppose retroactive application of USF

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All But One Commenter Agree That Audio Bridging Is Not A Telecom Service

- Stand Alone Providers Agree with InterCall that Audio Bridging is not a Telecom Service
- AT&T Distinguishes the Transmission from the "Audio Bridging Service" (Though it Pays on Both)
- Only Verizon Contends that Audio Bridging is Telecom
 - *But Verizon Ignores:*
 - *Qwest v. Farmers* (conferencing providers are end users under tariffs)
 - Enforcement Bureau's 2004-05 Reseller Survey
 - The absence of transfer of control, CPNI certifications, etc. regarding audio bridging services

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Verizon's Cases Are Inapposite

- AT&T "Picture Messaging Service" (1982)
 - Service was a rudimentary point-to-point video transmission service; it did not involve bridging
 - "Conferencing" component was classified as customer equipment, not a telecom service
- CALEA Order (1999)
 - Switch-based three-way calling is not equivalent to bridging
- E-Rate Eligible Services List
 - Classifications are for priority of reimbursement only; Other non-telecom services can be reimbursed as "telecommunications services"
 - In any event, only the telecommunications component of a conferencing service is eligible

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USAC's Decision Is Not The Correct Vehicle To Address The Policy And Legal Issues

- The FCC, Not USAC, Must Decide if Audio Bridging is a Telecom Service
 - Classification as a telecom service imposes many regulatory burdens wholly unrelated to USF (entry/exit regulation, tariffing, CPNI, etc.)
- The FCC, Not USAC, Must Provide Guidance to Stand Alone and Integrated Providers
 - Identification of the transmission and bridging components of the service for USF purposes
- Only a Rulemaking can Properly Provide an Industry Solution

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Retroactive Assessment Would Devastate CSPs With No Corresponding USF Benefit

- **Stand Alone CSPs Would Suffer Enormous Harm if USAC is Permitted to Assess Retroactively**
 - They already paid USF surcharges to their IXC's in good faith, and IXC's will not voluntarily refund amounts paid
 - USAC contends that no statute of limitations applies, yet will not permit amendment of returns after more than one year
 - The accumulated assessments, penalties and interest far exceed the ability of nearly all stand alone CSPs to pay
 - Could indirectly extend the full panoply of federal and state common carrier regulation to a previously unregulated industry

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Retroactive Assessment Would Devastate CSPs With No Corresponding USF Benefit (cont'd)

- The Harm Would Extend to IXC Suppliers as Well
 - Disrupt existing wholesale contracts and successful supplier-customer relationships
 - Endless litigation over the need to refund USF surcharge revenue
- USAC is Not Benefited by Retroactive Assessment
 - USF amounts due have already been paid, albeit indirectly
 - Only benefit would be an undeserved and unintended "double payment" windfall

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A Stay Is Appropriate While The Bureau Considers The Policy Issues

- Until the FCC Provides Additional Guidance, USAC Should Not Upset Decades of Industry Practice
 - The FCC, not USAC, must set the policy
- Retroactive Application of the USAC Decision Would Cause Irreparable Harm
- Protracted Litigation with IXC's Over Refunds is not in the Public Interest
- Stand Alone and Integrated Providers Can Pay the Same Amount Under Current Rules, so the Balance of Harms Favors a Stay

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